The principal case is deserving of attention because of its careful exposition of the distinct applications of the last clear chance doctrine. The rule announced by the Indiana court:—that the question of actual knowledge by the defendant of the plaintiff's danger is vital only when the plaintiff's negligence is concurrent with the defendant's, and coincident with the injury; and that such knowledge is then the fundamental issue,—is not universal, although reasonable. See 10 MICH. L. REV. 245 and authorities there cited. The complex opinions of many courts on the last clear chance theory tend to make hopeless confusion in a part of the law not intrinsically difficult.

PROXIMATE CAUSE—LOSS BY FIRE.—Defendant's train of cars was standing across a public highway. This was a misdemeanor by statute. Fire engines called to put out a fire in plaintiff's green-house were prevented from promptly reaching the burning property because blocked by the train. Immediate action probably would have extinguished the fire with slight loss. The greenhouse was destroyed. *Held,* the complaint showed negligence that was the proximate cause of the plaintiff's damage. *Cleveland, C., C. & St. L. Ry. Co.* v. *Tauer* (Ind. 1911), 96 N. E. 758.

It is almost axiomatic that issues of proximate cause cannot be determined by any absolute rule. See 8 MICH. L. REV. 488. To impose liability it is unnecessary that the defendant could have foreseen that the particular injury would be the result of his negligence. *Houren* v. *Chicago, M. & St. P. Ry. Co.,* 236 Ill. 620, 86 N. E. 611, 20 L. R. A. (N. S.) 1110, 127 Am. St. Rep. 309. The opinion in the principal case is in accord with the best reasoned decisions involving similar situations. *Little Rock Traction Co.* v. *McCaskill* (1905), 75 Ark. 133, 86 S. W. 997, 70 L. R. A. 680, 112 Am. St. Rep. 48; *Crissey & Fowler Lumber Co.* v. *Denver & R. G. R. Co.,* 17 Colo. App. 275, 68 Pac. 670; see note 12 L. R. A. (N. S.) 382. Although numerous cases can be distinguished by diverseness of facts, the reasoning of the Indiana court is often opposed. *Byrd* v. *English,* 117 Ga. 191, 64 L. R. A. 94. Some courts have deemed crucial the uncertainty and speculativeness of fire-fighting. *Lebanon etc. Tel. Co.* v. *Lanham Lumber Co.,* 131 Ky. 718, 115 S. W. 824, 21 L. R. A. (N. S.) 115; others have discriminated between active and passive causes, *Louisville & N. R. Co.* v. *Scruggs,* 161 Ala. 97, 49 South. 399; but remoteness of the original cause generally denotes the apparent reason for this line of decisions. *Bosch* v. *Burlington & M. R. R. Co.,* 44 Ia. 402, 24 Am. Rep. 754; *Hazel* v. *City of Owensboro,* 30 Ky. L. Rep. 627, 99 S. W. 315, 9 L. R. A. (N. S.) 235. Despite the absence of a statute in *Louisville & N. R. Co.* v. *Scruggs, supra,* where the facts are almost identical with those in the principal case, the decisions are clearly irreconcilable. Wilful, open, and gross negligence may be more actionable than the failure to perform a statutory duty.

SALES—ACCEPTANCE BY BUYER—MORTGAGE.—Action by assignee of vendee company to recover money paid by latter on the purchase price of a printing machine. Under the contract of sale, vendee company had a right to reject the machine, and recover the money paid, if it proved unsatisfactory after a test. After the machine was delivered to the vendee company, but before the test had been completed, the company mortgaged the machine to the

company's president and the defendant contended that by this act the company had made the property its own. The trial court found that the execution of the mortgage constituted acceptance as a matter of law and dismissed the plaintiff's complaint. On appeal, *held*, that the complaint should not have been dismissed, as there was evidence on which a jury could have found that there was no intent to accept the machine absolutely. *Harrison* v. *Scott* (N. Y. 1911), 96 N. E. 755.

Acceptance, where no element of estoppel intervenes, is purely a question of the vendee's intent. This, of course, must be shown by evidence of all the facts and circumstances attending the transactions between vendor and vendee. *Noel & McGinnis* v. *Kauffman Buggy Co.* (Ky.), 106 S. W. 237; and from the acts of the vendee tending to indicate ownership, or inconsistent with an intention to reject the goods, *Woodward* v. *Emmons*, 61 N. J. L. 281; selling them as vendee's own, *Delamater* v. *Chappell*, 48 Md. 244; or mortgaging them, *Van Winkle* v. *Crowell*, 146 U. S. 42, as in the principal case. The decisions are not in harmony on the latter point. The principal case holds that the giving of a mortgage is not conclusive of acceptance as a matter of law. Squarely opposed to this doctrine is the case of *Liggett & Myers Tobacco Co.* v. *Collier*, 89 Iowa 144, 56 N. W. 417, in which the court says, "If defendant firm did not consider it their property why did they mortgage it? They thereby undertook to make a disposition of it absolutely inconsistent with any claim that they had not accepted the property." The better doctrine seems to be that such acts as resale, mortgage and use are strong evidence of an intention to accept the goods, and that the question is for the jury. *Jones* v. *Reynolds*, 120 N. Y. 213, 24 N. E. 279; *Marshall* v. *Ferguson*, 23 Cal. 66; *Wyler* v. *Rothschild*, 53 Neb. 566; *Phillips* v. *Ocmulgee Mills Co.*, 55 Ga. 633; *Bushel* v. *Wheeler*, 15 Q. B. 442; *Parker* v. *Wallis*, 5 El. & Bl. 21; REED, STAT. FRAUDS, § 261; *Waite* v. *McKelvy*, 71 Minn. 167; *Becker* v. *Holm*, 89 Wis. 86. In effect this is the position of the New York court in the principal case, for it attempts to distinguish the case before it, on the facts, from those holding that a mortgage of goods by vendee after delivery, is an acceptance as matter of law.

SALES—INDIANA BULK SALES ACT HELD CONSTITUTIONAL.—It is provided by Laws of Indiana 1909, p. 122, known as the Bulk Sales Act, that a transfer in bulk, or any part of the whole, of a stock of merchandise or fixtures pertaining to the conduct of a business, otherwise than in the ordinary course of trade, shall be void as against creditors of the seller, unless seller and purchaser shall at least five days before the sale make an inventory of the goods, the purchaser to receive from the seller a written list of the names and addresses of the seller's creditors with the indebtedness of each, and unless certain notice is given to the creditors of the purchaser. *Held*, that the act is constitutional. *Kirth-Krause Co.* v. *Cohen* (Ind. 1912), 97 N. E. 1.

The act in question is a substantial copy of the Michigan Bulk Sales Act, Michigan Public Acts 1905, p. 322, which act was in *Spurr* v. *Travis*, 145 Mich. 721, held not to violate the State constitution, and in *Musselman Grocery Co.* v. *Kidd*, 151 Mich. 478, was held not to violate the Fourteenth